

Divorce



Divorce can be complicated and frustrating, so it's best to ask your questions to an attorney in person. For your benefit and ours, though, here are some of the questions that we hear most often:

Q. Can I Get A Divorce At The Legal Assistance Office?

A. I'm afraid not. You have to go to court to get a divorce.

Q. Will I need an attorney?

A. Probably, but it depends on your situation. If you and your spouse have no children and no property, or you agree on how to split up the children and property, you might be able to do a "pro se" divorce (a divorce without an attorney). Many states have the necessary forms available at their official court websites. You might also want to look for a law office where a paralegal could handle the divorce for a small one-time fee of a few hundred dollars. If you and your spouse don't agree on everything, on the other hand, you'll probably need to hire a private attorney. This isn't required, but it can be difficult and unwise to get a divorce without an attorney.

Q. How Much Would An Attorney Cost?

A. That depends on the attorney and your location, but you can count on spending at least a few thousand dollars if you hire an attorney for a contested divorce. Most attorneys ask for a large "retainer" – a sum of \$5000 or so – up front, and then as they work they deduct their hourly rate and fees from that retainer. So when you're thinking about who to hire, ask about their retainer, their hourly rate, and extra costs and fees. Get an estimate, if they'll give one. Have them put everything in writing. And while the case is going on, stay informed about their billing, and ensure that you see some relationship between costs and results.

Q. Where May I Get Divorced?

A. Most likely, only in the state where you or your spouse actually lives, but the answer to this question can be more complicated than you might think. The reason is that every state has its own "residency requirement" – a requirement that at least one spouse have been a resident of the state for a certain period of time before he or she can file for divorce – and these residency requirements can differ in small but important ways among states. For instance, do you think that a soldier who came from Oklahoma, spent six months at basic and AIT in Georgia, and was just stationed in Texas should file in Oklahoma, Georgia, or Texas? It depends! So you'll want to ask us.

Q. How Does Divorce Work in Court?

A. First, one of the spouses files a Petition for Divorce. Some states call the petition a "complaint" and the divorce a "dissolution", but the meaning is the same: This is the document that asks the court for the divorce and provides the court with the reasons it ought to grant the divorce. You file it with the court, along with a filing fee and a few other documents (a summons, some sort of service of process paperwork, and maybe other stuff too).

All of the documents have to be delivered to your spouse in a special way – they have to be "served" on him or her. Once service is complete, the other spouse has a certain amount of time (usually 20 or 30 days) to respond by filing an "Answer", the document that agrees or disagrees with your Petition. If the other spouse doesn't respond within the allotted time, you might be able to get a default judgment. If they do respond, then the judge looks at the Petition and the Answer and sets a hearing date to discuss everything with you. Both spouses

usually need to appear at the hearing, where the judge will ask questions and then either grant the divorce or continue the case to another time.

Q. Does It Matter Who Files For The Divorce?

A. Not really, although some jurisdictions may charge less if a military member files.

Q. What If My Spouse Won't Give Me A Divorce?

A. The judge grants a divorce, not your spouse. If your spouse won't cooperate with you, it will take longer and probably cost more to get your divorce, but you can still get one.

Q. How Long Does A Divorce Take?

A. It depends entirely on the law of the place where you get divorced. And that means about 50 different answers (or more) are possible for just the United Stated alone. So: ask your attorney!

Q. What Does It Mean to Be Divorced?

A. First of all, you become single again – you are no longer married. You can date, get remarried or stay single. And then a lot of practical things change. For instance, you can no longer file your taxes as "Married," and the ex-wife can usually start using her maiden name (after she changes it properly with the courts, of course).

A divorce, however, does not necessarily mean that child custody, alimony, and property division are all resolved. In some places, all issues in dispute between the parties must be resolved before the divorce is made official, but in others the divorce is separate from the other issues and may be granted independently, leaving you to haggle with your ex-spouse about many things. Ask your attorney about this for more detail.

Q. Do I Need a Separation Agreement to Get a Divorce?

A. No, you do not need a separation agreement to obtain a divorce. But it might make the divorce simpler, cheaper, and faster, because it shows the judge that you and your spouse have already agreed on everything that he otherwise might have had to decide. He might even simply incorporate the separation agreement into the divorce!

Q. Is My Divorce Final When the Judge Signs the Decree?

A. Not always. In some states there is a waiting period after entry of judgment before the divorce becomes final. In other states, it's final when signed by the judge. When in doubt, ask your divorce attorney or check the divorce judgment itself – the decree may state its effective date.

Q. Any Special Issues to Watch for?

A. Lots of things, but three in particular are very important. First, alimony (often called maintenance or spousal support) must be requested, in court and before the divorce is granted, in order to "keep it alive". So if you're a dependent spouse and you intend to ask the court for alimony, discuss it with your divorce lawyer at the outset, long before the divorce is granted.

Second, you and your spouse should try to divide all of your marital property before the divorce. Otherwise, a judge will do it, and you probably won't like his choices. That's because, as a general matter, everything that you and your spouse acquire during marriage is considered "marital property", meaning neither of you has a better claim to it than the other, so it could easily end up in either spouse's hands (this includes debts!). So if you don't want a judge giving your Harley to your wife, come to an agreement with her beforehand.

Third, if you get your divorce overseas, you'll need to register it in your home state to have it recognized in the United States. This is generally not difficult, but it's something you'll want and need to stay on top of. If you have questions about this, ask your attorney.

Q. Can My Spouse and I See the Same Lawyer?

A. Probably not. You and your spouse have different interests and each may want legal advice independent of the other. Now, you might see the same lawyer for general information on local divorce law and procedures (e.g., you'll need to go to court in state X), and a single lawyer might mediate the divorce for both spouses, but you would never want to see the same lawyer as your spouse if you and spouse are going through a contested divorce. In fact, lawyers are prohibited by their ethical rules from seeing two parties to the same proceeding!

Q. What Else Should I Do Before Divorce?

A. Prepare yourself, emotionally and financially, for the process and the ultimate result. For instance, you'll want to cancel joint financial obligations, accounts, and other arrangements, such as credit cards, bank accounts, and phone calling cards. The military spouse should file a disclaimer with AAFES and other check-cashing facilities to avoid being held liable for the non-military spouse's bad checks, and he or she should put a block on DPP or similar plans at AAFES for the same reason. AAFES disclaimers must be renewed every year until the divorce becomes final.

Both spouses should also consider canceling powers of attorney, making new wills, and changing the beneficiaries of IRAs and life insurance policies, including SGLI.

Q. Do Servicemembers Get Any Special Protections?

A. Yes! Under the Servicemembers Civil Relief Act (SCRA), dependent spouses of servicemembers must inform the court about their spouse's military service. Once the court knows that one party is a servicemember, it must, among other things, give the servicemember notice of any hearing dates and an opportunity to delay the dates by no less than ninety days if the servicemember can't make the hearing date. To invoke this protection, though, you'll need to send two letters to the court, one from you and one from your commander, stating that you can't make the date. An attorney at the legal assistance office can help you with this.

Q. Can My Spouse Really Get Part of My Retirement Pay?

A. Maybe. This can be complicated, so ask us, or see the handout on Retirement Pay.

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This information paper is one of a series of informative handouts containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. This information paper is distributed to persons eligible for legal assistance under 10 USC 1044.